

**IN THE NAME OF THE REPUBLIC OF ARMENIA  
DECISION OF THE CONSTITUTIONAL COURT OF THE  
REPUBLIC OF ARMENIA**

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**ON THE CASE CONCERNING THE CONSTITUTIONALITY OF  
ARTICLE 344 OF THE CIVIL CODE OF THE REPUBLIC OF ARMENIA  
RAISED BY THE APPLICATION OF RUBEN GRIGORYAN AND GOHAR  
GALSTYAN**

Yerevan

November 7, 2023

The Constitutional Court, composed of A. Dilanyan (presiding), V. Grigoryan, H. Tovmasyan, A. Tunyan, Y. Khundkaryan, H. Hovakimyan, E. Shatiryan, S. Safaryan, and A. Vagharshyan,

with the participation (in the framework of the written procedure) of:

A. Zeynalyan, the representative of the applicants Ruben Grigoryan and Gohar Galstyan,

the representative of the National Assembly, M. Stepanyan, Head of Legal Support and Service Division of the Staff of the National Assembly,

pursuant to Article 168(1) and Article 169 § 1(8) of the Constitution, as well as Articles 22 and 69 of the Constitutional Law on the Constitutional Court,

examined in a public hearing through a written procedure the case concerning the constitutionality of Article 344 of the Civil Code of the Republic of Armenia raised by the application of Ruben Grigoryan and Gohar Galstyan.

The Civil Code of the Republic of Armenia (hereinafter also referred to as the “Civil Code”) adopted by the National Assembly on May 5, 1998, was signed by the President of the Republic on July 28, 1998, and entered into force on January 1, 1999.

Article 344 of the Civil Code titled “Claims whereto the statute of limitations shall not apply” states as follows:

The statute of limitations shall not apply to:

(1) claims for the protection of personal non-property rights and other intangible assets, except for the cases provided for by law;

(2) claims filed with banks by depositors for repayment of deposits;

(3) claims for compensation for the damage caused to a citizen's life or health. However, claims filed three years after the time of arising of the right for compensation for such damage for the past period shall be satisfied for not more than three years preceding the bringing of the action;

(4) claims for elimination of each violation of the right of the owner or other possessor even if those violations have not been related to dispossession (Article 277);

(5) claims of the owner for declaring invalid the act of a State or local self-government body or the officials thereof, which has violated the owner's rights for property possession, use and disposal;

(6) other claims defined by law.

Article 344 of the Civil Code was not amended since adoption.

This case was initiated by the application of Ruben Grigoryan and Gohar Galstyan (hereinafter also referred to as the "applicants") submitted to the Constitutional Court on June 22, 2023.

Having examined the application, the written explanation of the respondent, and other documents in the case file, as well as the civil case YD/34667/02/19 requested and received by the Constitutional Court, the Constitutional Court **FOUND:**

### **1. Background of the constitutional dispute**

Since 1964 and 1986, respectively, the applicants Gohar Galstyan and Ruben Grigoryan were registered and lived in the apartment 12, Pavstos Buzand street 11, Yerevan.

On February 25, 1998, the Government adopted the Decision No. 114, which enabled the applicants to register their ownership rights to the real estate located at apartment 12, Pavstos Buzand street 11, Yerevan.

In compliance with the said Decision, the applicant Gohar Galstyan applied to the State Committee of the Real Estate Cadastre adjunct to the Government on May 25, 1998, requesting to recognize the ownership right to the apartment, but she did not receive any response.

Under the Government Decision No. 1151-N of August 1, 2002, the applicants' apartment fell in the project area for the society and State needs, by virtue of which the registration of the applicants' ownership right was restricted.

In compliance with the Government Decision No. 1748-N (paragraph 3) of May 15, 2003, the applicants' ownership right to the apartment was not authorised.

On October 29, 2004, the applicant Ruben Grigoryan applied to the State Committee of the Real Estate Cadastre adjunct to the Government, requesting to legalise the apartment, however, on November 1, 2004, his request was rejected on the grounds that the unauthorised real estate is located in the project area for the State needs.

The applicant Ruben Grigoryan applied to the Court of General Jurisdiction of Kentron and Nork Marash Communities against the State Committee of the Real Estate Cadastre adjunct to the Government, requesting to invalidate the action of the state authority and declare it as contradicting the law, as well as to recognize the applicant's ownership right to the apartment 12, Pavstos Buzand street 11, Yerevan, however, by the Court's decision of March 16, 2005, the applicant's claim was rejected on the grounds that in accordance with the Government Decision No. 1151-N of August 1, 2002, his apartment was included in the project area for the society and State needs.

On June 15, 2005, the applicants were evicted on an expedited basis from their apartment at the above-mentioned address, on the grounds that the Government Decision No. 950 established the procedure for the purchase, acquisition, and price formation of land plots and real estate located in the Northern Avenue area of Yerevan, and by the Government Decision No. 1151-N of August 1, 2002, the project area of real estate (land plots, buildings, and constructions) for the State needs was approved in the administrative territory of Yerevan City Community, which also included the real estate located at apartment 12, Pavstos Buzand street 11, Yerevan.

The applicants did not receive compensation from the State for the expropriated apartment on the grounds that the apartment was not authorised, and the applicants did not have ownership rights to it.

By the Constitutional Court Decision DCC-630 of April 18, 2006, Article 218 of the Civil Code, Articles 104, 106, and 108 of the Land Code, and the Government Decision No. 1151-N of August 1, 2002, underlying the expropriation of the applicants' apartment, and in effect with respect to the legal relations of expropriation, were declared as contradicting the Constitution and invalid.

On October 15, 2019, the applicants submitted a claim to the First Instance Court of General Jurisdiction of Yerevan against the Republic of Armenia represented by the Ministry

of Finance, requesting to provide prior adequate compensation for the property expropriated for the State needs.

The First Instance Court of General Jurisdiction of Yerevan (civil case No. YD/34667/02/19) satisfied the motion for applying the statute of limitations submitted by the representative of the Government, and issued a judgment on March 3, 2022, by which the applicants' claim was rejected on the grounds of expiry of the statute of limitations, as prescribed by Article 335 § 2 of the Civil Code.

On July 11, 2022, the applicants filed an appeal, which was rejected for the same reasoning by the decision of December 5, 2022 of the Civil Court of Appeal, and by the decision of March 22, 2023, the Cassation Court refused to accept the cassation appeal filed by the applicants against the decision of December 5, 2022 of the Civil Court of Appeal.

## **2. Applicants' submission**

The applicants state that Article 344 of the Civil Code of the Republic of Armenia has caused negative legal consequences to them which was applied against the latter by the First Instance Court of General Jurisdiction of Yerevan, and the Civil Court of Appeal, and was directly cited in the judgment of March 3, 2022 of the First Instance Court of General Jurisdiction of Yerevan, and in the decision of December 5, 2022 of the Civil Court of Appeal.

The applicants consider that Article 344 of the Civil Code does not provide any exception for the application of the statute of limitations to the claims for prior adequate compensation for the property in the cases stipulated by the Law on Expropriation of Property for the Society and State Needs, in which case the courts, in particular, the First Instance Court of General Jurisdiction of Yerevan by its judgment of March 3, 2022, and the Civil Court of Appeal by its decision of December 5, 2022, had no opportunity to ensure the applicants' right of access to the court and to consider the merits of the dispute on the prior adequate compensation for the property.

The application of the statute of limitations to a claim alleging a continued violation of rights, and the refusal of the courts to consider the merits of the claim lead to a violation of the right of access to the court. Referring to the practice of the European Court of Human Rights, the applicants state that a continued violation of rights exists not only under the situation described in Article 277 of the Civil Code, but also in the situation of refusal to pay or provide prior adequate compensation for the expropriation of property based on the prevailing public interests, and for the property expropriated for the State needs.

The applicants also consider that the exception to the application of the statute of limitations to the claims under the situation described in Article 277 of the Civil Code is

stipulated by Article 344 of the Civil Code, however, the said article did not establish a similar exception for the cases of continued violation of rights, such as the refusal from prior adequate compensation for the expropriation of property for the State needs based on the prevailing public interests.

According to the applicants, the right to receive prior adequate compensation for their property, as prescribed by Article 60 § 5 of the Constitution, was violated since this right envisages not only the property already recognized by the State, but also the legitimate expectation of the applicants with respect to the said property.

The applicants asserted that the application of the statute of limitations to their claim had led to the refusal of the substantive consideration on the merits of their claim, i.e. to the violation of the right of access to the court.

The applicants believed that the principle of legitimacy was violated due to the fact that the provisions of the Civil Code on the statute of limitations cannot be applied to the legal relations prescribed by Article 60 § 5 of the Constitution since those relations were lasting and continued.

The applicants argued that due to a legal gap, the courts failed to ensure the substantive consideration on the merits of the applicants' claim aimed at the protection of their property rights. The applicants find that the institution of the statute of limitations is aimed at ensuring the legal certainty, predictability, and security in a rule of law State, and in terms of a lasting and continued violation, there can be no question of legal certainty since, in this case, the person's right of access to the court shall prevail.

### **3. Respondent's submission**

Referring to the respective decisions of the Constitutional Court and the judgments of the European Court of Human Rights, the National Assembly (hereinafter also referred to as the "respondent") considers that there is no legal uncertainty or legislative gap in the legal provision of the Civil Code disputed by the applicants.

The respondent states that "the failure to apply the statute of limitations to the claims for the elimination of the violations of the rights not related to the deprivation of possession (negatory claim) of the owner or other possessor is due to the fact that those violations were continued and lasting, and the application of the statute of limitations on the claims for the elimination of the violations of the rights related to the deprivation of the possession (vindication claims) of the owner or other possessor is clarified in accordance with the following conditions:

- ensuring legal certainty and finality;
- protecting potential respondents from outdated and, therefore, heavily contestable claims;
- preventing unfair decisions in cases where the court is required to resolve the claim by establishing facts that happened in the past, and based on the evidence that has become unreliable or incomplete due to the passage of considerable time;
- regulating civil circulation;
- establishing the certainty and stability of legal ties;
- ensuring the discipline of the participants in the legal relations;
- ensuring the timely protection of the rights and interests of civil legal entities;
- ensuring the certainty and stability of the civil legal relations”.

As for the legislative gap, the respondent states that, in essence, the applicants’ claims are aimed at establishing new regulations for the statutes of limitations, rather than the legislative gap within the current regulations.

In summary, the respondent considers that Article 344 of the Civil Code complies with the Constitution.

#### **4. Consideration framework of the constitutional dispute, and the circumstances to be ascertained**

The case under consideration of the Constitutional Court was raised by the individual application of the applicants submitted under Article 169 § 1(8) of the Constitution. Therefore, in order to determine the scope of the constitutional dispute raised in this case, the Constitutional Court considers it necessary to clarify the type of legal relations, namely, the claim for prior adequate compensation for the expropriation of property under Article 60 § 5 of the Constitution, which, in this case, restricts the verification of constitutionality of the statute of limitations for similar claims in civil law, and, subsequently, the chronological time frame of the legal regulations that served as grounds for the arising of the claim for prior adequate compensation for the property under Article 60 § 5 of the Constitution, which covers the legal relations of the expropriation of the applicants’ apartment. In particular:

**4.1.** This constitutional dispute arose from the legal relations that emerged in the process of expropriation of the applicants’ apartment, as described in paragraph 1 of this decision, which are clearly distinguished from other groups of property-legal relations regulated by civil

law, taking into account **(1)** the subject structure of this legal relation which, under the legislation in force at the time of the expropriation of the applicants' property, was limited to the scope of a natural or legal person and the State, where exclusively the Republic of Armenia was entitled to submit claims for property expropriation, and **(2)** the nature of this legal relation, the provisions of civil legislation regulating whereof were an exception to the general principles of autonomy of will and property independence of the participants of the regulated relations underlying the civil legislation (Article 3 § 1 of the Civil Code).

Therefore, the special nature of the above-mentioned legal relations determines the substantive scope of this constitutional dispute, i.e. the verification of constitutionality of the statute of limitations on the compensation claim in the relations of expropriation of property or the legitimate expectation thereof exclusively for the purpose of securing the prevailing public interests (for the society and State needs) arising from Article 60 § 5 of the Constitution.

Henceforth, in the context of the expropriation of property or the legitimate expectation thereof exclusively for the purpose of securing the prevailing public interests (for the society and State needs) arising from Article 60 § 5 of the Constitution, the Constitutional Court shall use the general term "*property*" for editorial considerations, thus meaning both the "property" stipulated in Article 60 § 1 of the Constitution, as well as the property under the legitimate expectation of property in accordance with the decisions DCC-741 (paragraph 8) of March 18, 2008, DCC-1238 (paragraph 7) of December 1, 2015, DCC-1326 (paragraph 6) of December 6, 2016, DCC-1424 (paragraph 4.2) of July 10, 2018, DCC-1448 (paragraph 4.4) of March 19, 2019, DCC-1583 (paragraph 4.2) of March 9, 2021, DCC-1609 (paragraph 4.2) of September 14, 2021, DCC-1611 (paragraph 6.2) of September 27, 2021, DCC-1617 (paragraph 3) of November 9, 2021, and DCC-1618 (paragraph 4.5) of November 30, 2021.

**4.2.** The Constitutional Court states that this constitutional dispute arose from the legal relations of property expropriation for the society and State needs, that emerged in the process of expropriation of the applicants' apartment, as described in paragraph 1 of this decision. In general, the history of the regulation of the legal relations of property expropriation for the purpose of securing the prevailing public interests (for the society and State needs) includes three chronological phases that envisage different legislative regimes.

The first phase of the above-mentioned regulations covers from January 1, 1999 (the entry into force of the Civil Code) to October 1, 2006, when by the Constitutional Court Decision DCC-630 of April 18, 2006, the following key legal provisions regulating the legal relations of compulsory expropriation of property for the society and State needs were invalidated, namely:

(a) Article 218 of the Civil Code, due to non-conformity with the requirements of Articles 3, 8 § 1, 31 § 3, and 43 of the Constitution (with amendments of 2005) in part of

regulating the legal relations of compulsory expropriation of property for the society and State needs;

(b) Article 104 of the Land Code due to non-conformity with the requirements of Articles 8 § 1, 31 § 3, and 43 of the Constitution (with amendments of 2005) in part of regulating the legal relations of compulsory expropriation of property for the society and State needs;

(c) Article 106 of the Land Code due to non-conformity with the requirements of Articles 31 § 3, 43, and 83.5(1 and 2) of the Constitution (with amendments of 2005);

(d) Article 108 of the Land Code due to non-conformity with the requirements of Articles 3, 31 § 3, and 43 of the Constitution (with amendments of 2005);

(e) Government Decision No. 1151-N on Measures for the Implementation of Construction Projects in the Administrative Territory of Yerevan Center Community dated August 1, 2002, based on the provisions of Article 218 of the Civil Code, and Article 104 of the Land Code, due to non-conformity with the requirements of Articles 3, 8 § 1, 31 § 3, 43, 83.5(1 and 2), and 85 § 2 of the Constitution (with amendments of 2005) in part of sub-legislative regulation of the legal relations of compulsory expropriation of property for the society and State needs.

The next, second phase of the legal relations of expropriation of property for the society and State needs includes the period starting from October 1, 2006 (i.e. the deadline for the invalidation of the aforementioned provisions of the Civil Code and Land Code, and of the Government Decision No. 1151-N of August 1, 2002, as prescribed by the final part of the Constitutional Court Decision DCC-630 of April 18, 2006), to December 29, 2006 (prior to the entry into force of the Law (HO-185-N) on Expropriation of Property for the Society and State Needs), when the legal relations of expropriation of property for the society and State needs were not legislatively regulated.

Finally, the next, third phase of the legal relations of expropriation of property for the society and State needs, or for the purpose of securing the prevailing public interests, includes the period from December 30, 2006 to the present, which includes the period when the Law (HO-185-N) on Expropriation of Property for the Society and State Needs was in effect.

Taking into account the nature of the constitutional dispute of the specific verification of the constitutionality of legal provisions raised by the individual application in this case, and the decisive circumstance for the scope of the dispute considered thereby, that the expropriation of the applicants' apartment, as described in paragraph 1 of this decision, took place within the above-mentioned period from January 1, 1999 to October 1, 2006, i.e. the timeframe of occurrence of the legal relations of expropriation of property for the society and



State needs, the Constitutional Court limits the scope of this constitutional dispute to the review of the constitutionality of the statute of limitations regarding the claim for compensation for the expropriated property in such legal relations of property expropriation only for the purpose of securing the prevailing public interests under Article 60 § 5 of the Constitution (for the society and State needs) that were regulated by the legal regulations in force in the first period described above, which chronologically includes from January 1, 1999 to October 1, 2006.

**4.3.** The Constitutional Court also states that the content of the constitutional dispute raised by the applicants, i.e. the constitutionality of the statute of limitations regarding the claim for compensation for the expropriation of property for the purpose of securing the prevailing public interests (the society and State needs) falls into the scope of protection of procedural guarantees prescribed by Article 60 § 5 of the Constitution. Therefore, the constitutionality of the controversial legislation examined by the Constitutional Court within the framework of this constitutional dispute is subject to verification from the perspective of its compliance with the guarantees prescribed by Article 60 § 5 of the Constitution.

**4.4.** At the same time, the content of the constitutional dispute put forward by the applicants, i.e. the constitutionality of the statute of limitations regarding the claim for compensation for the expropriation of property for the purpose of securing the prevailing public interests (the society and State needs), as a legal issue on the hierarchy of the provisions regulating the protection of property rights prescribed by the Constitution, due to its consequential effect of the statute of limitations, also leads to the restriction of the right to fair trial prescribed by Article 63 § 1 of the Constitution in the manner of restricting the right of access to the court, or the right of access to justice. Therefore, the constitutionality of the disputed legal provision examined by the Constitutional Court in the framework of this constitutional dispute is subject to verification also for the purpose of its compliance with Article 63 § 1 of the Constitution in the aspect of the structure of procedural protection of property rights in the framework of this case.

**4.5.** Considering the above, the Constitutional Court defines the scope of this constitutional dispute in accordance with the following statement of questions:

- whether in the sense of Article 60 § 5 of the Constitution (within the meaning of the fourth sentence of Article 28 of the Constitution of 1995, i.e. expropriation of property for the society and State needs), in disputes arising from legal relations regulated by the legal provisions effective from January 1, 1999 to October 1, 2006, the constitutional guarantee of prior adequate compensation for the expropriated property is subject to restrictions by the public power, and

- if the answer to the previous question is positive, whether the failure to define the requirement of prior adequate compensation for the expropriated property prescribed by Article 60 § 5 of the Constitution (within the meaning of the fourth sentence of Article 28 of the Constitution of 1995, i.e. expropriation of property for the society and State needs) in the list of the statute of limitations prescribed by Article 344 of the Civil Code, in disputes arising from legal relations regulated by the legal provisions effective from January 1, 1999 to October 1, 2006, complies with Article 60 § 5 of the Constitution from the perspective of proportionality of the restriction of the claim for “*prior adequate compensation*” for the expropriated property, and

- if the answer to the first question is positive, whether the failure to define the requirement of prior adequate compensation for the expropriated property prescribed by Article 60 § 5 of the Constitution (within the meaning of the fourth sentence of Article 28 of the Constitution of 1995, i.e. expropriation of property for the society and State needs) in the list of the statute of limitations prescribed by Article 344 of the Civil Code, in disputes arising from legal relations regulated by the legal provisions effective from January 1, 1999 to October 1, 2006, complies with Article 63 § 1 of the Constitution from the perspective of proportionality of the restriction of the right to fair trial.

## **5. Assessment by the Constitutional Court of the right to property**

**5.1.** Provisions of the Constitution relevant for the resolution of this constitutional dispute:

Under Article 1 of the Constitution, “The Republic of Armenia is a (...) State governed by the rule of law”.

Under Article 3 § 2 of the Constitution, “[T]he respect for and protection of the fundamental rights and freedoms of the human being and the citizen shall be the duties of the public power”.

Under Article 3 § 3 of the Constitution, “[T]he public power shall be bound by fundamental rights and freedoms of the human being and the citizen as the directly applicable law”.

Under Article 5 § 1 of the Constitution, “[T]he Constitution shall have supreme legal force”.

Under Article 60 § 5 of the Constitution, “[E]xpropriation of property for prevailing public interests shall be performed in exceptional cases and in the procedure prescribed by law, and only with prior adequate compensation”.

Under Article 63 § 1 of the Constitution, “[E]veryone shall have the right to a fair and public hearing of his case within a reasonable period by an independent and impartial court”.

**5.2.** The Constitutional Court reiterates its previously indicated assessment of the right to property that, as a characteristic of guaranteeing the rights and freedoms of a person in a democratic, social and rule of law State, and also as a mechanism for regulating private and public legal relations, the right to property is of important constitutional legal significance (Constitutional Court Decision DCC-1432 of October 30, 2018, paragraph 4.1).

The Constitutional Court states that the emphasised significance of the protection of right to property in the legal system of the Republic of Armenia is indicated first of all in Article 10 of the Constitution, in the Chapter titled “The Foundations of Constitutional Order”, which states that all forms of ownership shall be recognized and equally protected in the Republic of Armenia.

For the protection of the fundamental right to property, the guarantees for the protection of the right to property are also prescribed by Article 60 of the Constitution.

In addition to the above, the Constitutional Court deems it important to state that the fundamental right to property, although with some contextual amendments yet as a legal stipulation of the fundamental right, has been consistently defined in the Constitution and all the amendments thereto from 1995 until now.

In addition, the Constitutional Court also states that the duty of the public power to protect the right to property is an important component of the legal system of the Republic of Armenia also under the international instruments on the protection of human rights ratified by the Republic of Armenia, particularly but not limited to the Universal Declaration of Human Rights (Article 17, adopted and proclaimed by UN General Assembly Resolution 217 A (III) of December 10, 1948), and Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms signed on November 4, 1950.

Based on the fundamental constitutional value of the protection of the right to property as a component of the constitutional order of the Republic of Armenia, the purposes, legal grounds, and terms for the interference with the right to property are prescribed by Article 60 of the Constitution, namely, **(1)** general restrictions of the right to property, **(2)** expropriation of property, and **(3)** for the purpose of securing the prevailing public interests (the society and State needs).

At the same time, the Constitutional Court reiterates the positive duty of the public power of the Republic of Armenia in the protection of the right to property, among other efforts, to guarantee the fulfilment of the constitutional legal requirements regarding the expropriation of property for the purpose of securing the prevailing public interests (the

society and State needs), and providing prior adequate compensation (Constitutional Court Decision DCC-1432 of October 30, 2018, paragraph 4.1).

Stressing the importance of the protection of the right to property for the constitutional order of the Republic of Armenia, the Constitutional Court also states that the right to property is not absolute and is subject to constitutionally valid restrictions, i.e. any interference in the form of restriction of the right to property must meet the following general conditions prescribed by Article 60 § 3 of the Constitution:

- the right to property may be restricted only by the law that meets the requirements of Article 79 of the Constitution;

- the right to property may be restricted only with the aim of protecting the interests of the public or the fundamental rights and freedoms of others;

- the restriction of the right to property must comply with the constitutional principle of proportionality prescribed by Article 78 of the Constitution;

- the restriction of the right to property may not exceed the restrictions prescribed by international instruments ratified by the Republic of Armenia.

**5.3.** The norm prescribed by Article 60 § 3 of the Constitution acts as a general rule (*lex generalis*) for the public power to interfere with the right to property.

At the same time, for the purpose of regulating the legal relations of the two special forms of the stringent interference with the right to property, i.e. deprivation of property, and expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs), Article 60 § 4 and Article 60 § 5 of the Constitution, respectively, stipulate special norms which are considered as special norms (*lex specialis*) with respect to Article 60 § 3 of the Constitution, and due to the degree of stringency of the interference provided thereby, and the nature of the legal relations, the latter have defined other special and mandatory terms for the constitutionally valid interference with the right to property.

In particular, along with the general conditions prescribed by Article 60 § 3 of the Constitution, the provision of the “judicial order” prescribed by Article 60 § 4 of the Constitution, and the “prescription by law” in case of expropriation of property, are necessary conditions for the constitutional validity of interference in the form of deprivation of property.

At the same time, the general conditions prescribed by Article 60 § 3 of the Constitution for the interference with the right to property in the form of expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs), have become more stringent by Article 60 § 5 of the Constitution with the following qualitative requirements:

- Unlike the constitutionally valid aim of “*protecting the interests of the public or the fundamental rights and freedoms of others*” from the interference with the right to property prescribed by Article 60 § 3 of the Constitution, the constitutionally valid aim of interference with the right to property (expropriation of property) prescribed by Article 60 § 5 of the Constitution **(1)** does not include such interference for the purpose of “*protecting the fundamental rights and freedoms of others*”, **(2)** and refers only to the part related to the scope of the general objectives of “*protecting the interests of the public*” that falls under the “*prevailing public interests*”, which limits the range of the constitutionally valid interference for the purpose of securing the prevailing public interests;

- Unlike the legal grounds for the constitutionally valid interference with the right to property prescribed by Article 60 § 3 of the Constitution, the legal grounds for the “*law*” and its inevitable qualitative requirements prescribed by Article 78 of the Constitution, namely, the legal grounds for the constitutionally valid interference with the right to property prescribed by Article 60 § 5 of the Constitution (expropriation of property), in addition to the requirements for the “*law*” prescribed by Article 60 § 3 of the Constitution, **(1)** must also necessarily define the “*exceptional cases*” of interference, and **(2)** the “*procedure*” for the expropriation of property;

- Unlike the choice of measures prescribed by Article 60 § 3, i.e. the interference with the right to property envisaged by the general principle of proportionality prescribed by Article 78 of the Constitution, and reserved to the discretion of the public power to ensure such proportionality, in case of the interference with the right to property (expropriation of property) under Article 60 § 5 of the Constitution, proportionality is weighted by the constituent power, and the “*compensation*” is the measure chosen to ensure thereof, and the “*prior*” and “*adequate*” constitutional standards are the qualitative requirements for the latter.

Stating the above-mentioned considerations on the general norm of the constitutionally valid interference with the right to property, i.e. Article 60 § 3 of the Constitution, and on the special norm of the constitutionally valid interference in the form of deprivation of property for the purpose of securing the prevailing public interests (the society and State needs), i.e. Article 60 § 5 of the Constitution, the Constitutional Court notes that the question raised by the applicants within the framework of this constitutional dispute, referring to the legal relations of the expropriation of property for the purpose of securing the prevailing public interests (the society and State needs), does not comprise a constitutional dispute either on the constitutionally valid interference with the right to property, or the law underlying such an interference and the features thereof.

Instead, as already mentioned in paragraph 4.2 of this decision, the constitutional dispute refers to the right to compensation for the expropriated property, as prescribed by Article 60 § 5 of the Constitution, as an issue related to the proportionality of interference with the

property for the purpose of securing the prevailing public interests (the society and State needs).

Therefore, the Constitutional Court will further consider the constitutionality of the contested legal provision towards the verification of the proportionality of the interference stipulated by the contested legal provision.

**5.4.** The resolution of this constitutional dispute, as already mentioned in paragraph 4.2 of this decision, is chronologically related to the time frame when the Constitution of 1995 and the amendments of 2005 and 2015 thereto were in force, where:

(a) the legal relations that emerged in the process of expropriation of the applicants' apartment, as described in paragraph 1 of this decision, occurred when the Constitution of 1995 was in force, and according to Article 28 (that relates to these legal relations) of the Constitution of 1995, "... *[E]xpropriation of property for the society and State needs may be performed only in exceptional cases and based on the law, with prior adequate compensation*";

(b) according to Article 31 § 3 of the Constitution with the amendments of 2005, "*[E]xpropriation of property for the needs of society and the State may be performed only in exceptional cases of prevailing public interests, in the procedure prescribed by law, with prior adequate compensation*";

(c) according to Article 60 § 5 of the Constitution with the amendments of 2015, "*[E]xpropriation of property for prevailing public interests shall be performed in exceptional cases and in the procedure prescribed by law, and only with prior adequate compensation*".

The above constitutionally prescribed special rule on the expropriation of property for the society and State needs – upon the adoption of the Constitution of 1995, and for the purpose of securing the prevailing public interests – upon the entry into force of the constitutional amendments of 2015, underwent contextual amendments, which referred to **(1)** the content of the constitutional purpose of the interference with the right to property (from 1995 to the constitutional amendments of 2005 – "*for the society and State needs*", after the entry into force of the amendments to the Constitution of 2005 – "*for the needs of society and the State may be performed only in exceptional cases of prevailing public interests*", and according to the current Constitution – "*for prevailing public interests*"), and **(2)** the legal grounds for the interference (from 1995 to the constitutional amendments of 2005 – "*based on the law*", after the entry into force of the amendments to the Constitution of 2005 – "*in the procedure prescribed by law*", and according to the current Constitution – "*in exceptional cases and in the procedure prescribed by law*").

Meanwhile, in the case of the expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs), the commandment of proportionality of interference with the right to property has consistently remained unchanged, thereby guaranteeing the imperative condition for maintaining proportionality in the event of such interference, i.e. “*compensation*”, and the requirements thereto as constitutional requirements in the case of interference, i.e. “*prior*” and “*adequate*”.

**5.5.** Stating the status of the special norm with respect to the general constitutional principle of proportionality of the constitutional requirement (prescribed by Article 60 § 5 of the Constitution) on the proportionality of interference with the right to property in the event of expropriation of property for the purpose of securing the prevailing public interests (before the amendments to the Constitution of 2015 – for the society and State needs), the Constitutional Court, for the purpose of resolving this constitutional dispute, considers it necessary to reveal the significance of the general principle of proportionality, and of the prescription of the special constitutional norm regarding the said principle.

According to Article 78 of the Constitution, the means chosen for restricting fundamental rights and freedoms have to be suitable and necessary for the achievement of the aim prescribed by the Constitution. The means chosen for restriction have to be commensurate with the significance of the fundamental right and freedom that is restricted.

In this regard, the Constitutional Court reiterates its position expressed by the analysis of the constitutional principle of proportionality of the restriction of a fundamental right or freedom, which states as follows:

“(...) restriction of any fundamental right is possible only by law, and due to the principle of proportionality, the requirements for restrictions of fundamental rights by law are as follows:

(1) legitimacy of the aim of the restriction, i.e. the prescription of the aim by the Constitution;

(2) (a) suitability for the achievement of the aim prescribed by the Constitution;

(b) necessity for the achievement of the aim prescribed by the Constitution;

(c) commensurability with the significance of the fundamental right and freedom that is restricted

of the means chosen for the restriction.

The Constitutional Court has referred to the principle of proportionality in a number of its decisions.

(...)

In view of the above, the Constitutional Court assesses that the principle of proportionality is one of the components of the fundamental principle of the rule of law State as prescribed by Article 1 of the Constitution. It is explicitly (*expressis verbis*) enshrined in the Constitution (in force) with the amendments of 2015.

The essence of the principle of proportionality is to limit the restrictions of the fundamental rights of a human being and a citizen by ensuring a reasonable balance between private and public interests, and this principle is of particular importance among the constitutional requirements to the restriction of fundamental rights and freedoms” (Constitutional Court Decision DCC-1546 of June 18, 2020).

The above-described principle of proportionality is designed as a constitutional content of the proportionality of the restriction of a fundamental right or freedom, and is necessarily applicable to the assessment of the legitimacy of all permissible interferences with an individual right or freedom.

The verification of the constitutional validity of an interference with a (non-absolute) right or freedom subject to restrictions or other interferences includes the general checklist of verification of **(1)** the aim of such interference, **(2)** the existence and quality of the legal act that served as grounds for the interference, and **(3)** the proportionality of the interference, where the verification of proportionality of the interference is the final phase of the sequence of the verification of the constitutional validity criteria. This methodological sequence is not a hierarchy of significance of the criteria for the verification of the constitutionality of the interference, and reflects the priority of the verification of the previous criterion necessary for the composition of each subsequent criterion.

On the contrary, as a qualitative characteristic of the Republic of Armenia governed by the rule of law, as prescribed by Article 1 of the Constitution, and a guarantee of a fundamental human right or freedom, as prescribed by Article 3 of the Constitution, the constitutional principle of proportionality of interference with the fundamental rights or freedoms serves as a condition for restricting the fundamental right, and at the same time as an instrument for the restriction of the discretion of the public power in **(1)** choosing the aim designed by the public power for such interference, and **(2)** choosing the restrictions applicable to the legal norm required by the Constitution, thus guaranteeing the inviolability of the essence of the constitutional provisions of the fundamental right or freedom prescribed by Article 80 of the Constitution.

Therefore, as the last criterion in the methodological sequence designed for the purpose of the verification of the constitutional validity of the constitutionally permissible restriction or other interferences with the fundamental right, the constitutional principle of



proportionality is the primary guarantee ensuring the inviolability of the **essence** of the constitutional provisions of the fundamental right or freedom, since, as a condition for the constitutional validity of the permissible restriction or other interference with the fundamental right, at the same time, the principle of proportionality is also aimed at restricting (counterbalancing) the discretion of the public power in defining the other two conditions by virtue of establishing a fair balance between the rights of the individual and public interests.

The constitutional norms on fundamental rights or freedoms have a high degree of generality and abstraction. This applies even more to the constitutional provisions related to the constitutional principles. Referring to the quality of generality and abstraction of legal norms in general, the Constitutional Court has noted as follows: “When discussing the issue in the context of the principle of certainty, it should be considered that the legal norms, as general-abstract regulations, always need certain interpretations, and it is almost impossible to clearly regulate all the multifaceted relations of public life through the uniform legal norms” (Constitutional Court Decision DCC-1610 of September 23, 2021).

The property of abstractness inherent in the norm of the law is increasingly specific to the norms envisaging constitutional principles or rules, and the specification of such norms, namely, ensuring their maximum possible clarity and predictability, is one of the main duties of the public authorities in the field of respect and protection of fundamental rights and freedoms. This process is carried out primarily by the legislature via law-making activity, by the executive power via rule-making activity, and by the law-enforcement and judicial power – within the framework of the constitutional powers reserved to the latter in the fields of judicial interpretation and law-enforcement.

Considering the above, the Constitutional Court states that for the purpose of ensuring a fair balance between the individual right or freedom and public interests defined by the principle of proportionality prescribed by Article 78 of the Constitution, the public power is endowed with the discretionary authority to choose and apply the necessary means to ensure such balance.

Nevertheless, the Constitutional Court states that the Constitution contains an exhaustive list of fundamental rights, the choice of means of ensuring the proportionality necessary for the constitutionality of the interference is constitutionally prescribed; therefore, it is beyond the scope of the discretionary authority of the public power, and has the feature endowed with the highest legal force of the constitutional imperative.

In particular, but not limited to this consideration, the compensation, as a means of ensuring proportionality in case of interference with the fundamental right, was directly chosen by the constituent power, and was constitutionally prescribed in three constitutional norms:

(1) Article 60 § 5 of the Constitution defines compensation for the expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs);

(2) Article 62 § 1 of the Constitution defines compensation for damage inflicted by unlawful actions or inaction of State and local self-government bodies and officials, and in cases prescribed by law, also by lawful administration, and the terms and procedure thereof shall be defined by law;

(3) Article 62 § 2 of the Constitution defines compensation in accordance with the law in cases where a person convicted by a court judgment that has entered into legal force, for committing a crime has been acquitted on the ground that a new or newly-discovered circumstance proves that such conviction was unlawful, the person shall have the right to receive compensation in accordance with the law, unless it is proven that the discovery of such circumstance back in time depended fully or partially on such person.

The comparative analysis of the three cases mentioned above indicates that, in contrast to the cases of the direct determination of the measure necessary for the purpose of stipulating the proportionality prescribed by Article 62 §§ 1 and 2 of the Constitution, when the constituent power has left the issue of the adequacy of compensation in general (as in the cases prescribed by Article 62 § 2) to the discretion of the legislature, i.e. in one case – the determination of the conditions, cases and compensation procedure (as in the cases prescribed by Article 62 § 1 of the Constitution), and in the other case – the issue of the adequacy of compensation in general (as in the cases prescribed by Article 62 § 2), and the constituent power has defined the measure of proportionality (compensation) of the interference prescribed by Article 60 § 5 of the Constitution, and the qualitative standards (prior adequate) proposed thereto by enshrining the latter in the Constitution.

5.6. The Constitutional Court, analysing in paragraph 5.5 of this decision the constitutional principle of proportionality prescribed by Article 78 of the Constitution, states that by its contextual significance this principle is aimed at the “*limitation of restrictions (interferences)*” of constitutional interfering rights, and in the law-enforcement aspect, it is aimed at the limitation of the discretion of the public power in restricting fundamental rights, or other interference as a primary guarantee of the protection of the right of an individual.

The constituent power has stipulated the condition-guarantee for implementing the interference (expropriation) prescribed by Article 60 § 5 of the Constitution “*only with prior adequate compensation*”, and the owner of the property expropriated under such conditions, having the right to request “*prior adequate compensation*” for the property, shall be protected from the possible consequence of disproportionate burden in case of such interference.

In this sense, the Constitutional Court considers it necessary to refer to the purpose of choosing by the constituent power of the proportionality means (compensation) prescribed by Article 60 § 5 of the Constitution, and the purpose of constitutional establishment of the properties thereof.

The constitutional guarantee of “*prior adequate compensation*” in property expropriation relations for the purpose of securing the prevailing public interests (for the society and State needs) is called upon to counterbalance the wide discretion of the public power, where the lack of necessary and sufficient guarantees in public power-individual legal relations is the effective means available to the owner, aimed at reducing the individual’s vulnerability and preventing possible arbitrariness of the public power.

Nevertheless, taking into account the arrangement of the combination of material interests in the process of property expropriation for the purpose of securing the prevailing public interests (for the society and State needs), where:

(a) the issue of determining the aim of property expropriation (prevailing public interests) for the purpose of securing the prevailing public interests (for the society and State needs) is vested exclusively to the discretion of the public authorities; and

(b) the State shall be the beneficiary of the expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs); and

(c) due to the significant impact of the prevailing public interests (for the society and State needs), the individual interest in protecting the right to property of the individual shall be subordinated to the need to securing the prevailing public interests (for the society and State needs); and

(d) in case of expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs), the restoration of the right of ownership of the expropriated property is an irreversible consequence in the sense of the restoration of the rights to that property, considering the fact that the opposite contains a risk of jeopardising the prevailing public interests;

due to the subject structure of the legal relations of the expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs), where the proportionality of interference with the right to property in the State-individual relations is the only possible issue enabling the individual to participate in that process, the constituent power has – for the purpose of establishing a fair balance between securing the prevailing public interests (for the society and State needs) and determining the means of establishing a fair balance between the protection of individual property rights (compensation) and its quality standards (prior adequate) – established the key elements of the constitutional principle of

proportionality in the Constitution, with the exception of the general rule of vesting the legislature with the clarification of the criteria of the constitutional validity of the restrictions prescribed by Article 60 § 3 of the Constitution.

Thus, the constituent power has constitutionally prescribed the choice of proportionality, as prescribed by paragraph 5.5 of this decision, i.e. the means of “limitation of restrictions or other interferences” with the fundamental right and properties thereof, and removed the establishment of its scope from the framework of the competence of the public power as a guarantee of the protection of the individual’s right against possible arbitrariness arising from the above-mentioned combination of interests for the interference with the fundamental right, and in contrast to vesting the legislature with the choice of the components of the principle of proportionality for the interference with other fundamental rights and properties thereof, the constituent power has approved the formula of proportionality in this legal relation within the scope of the stability of the constitutional norm and the protection of its supreme legal force, thereby excluding the interference of the public power with its outcome, i.e. the means of “*prior adequate compensation*”.

Therefore, the right to request “*prior adequate compensation*” for the property expropriated for the purpose of securing the prevailing public interests (for the society and State needs), as a property right to measurable economic value, is already beyond the effect of the general rule of restriction of the right to property prescribed by Article 60 § 3 of the Constitution, since it also has the content of a guarantee confirming the proportionality when “*limiting the restriction*” of the right prescribed by Article 60 § 5 of the Constitution, and designed for preventing the arbitrariness of interfering with the right to property by the public power.

Consequently, the exclusion of the arbitrariness of interfering with the right to property by the public power is aimed at predetermining the establishment of “*prior adequate compensation*” in Article 60 § 5 of the Constitution, thereby excluding the authority of the public power to interfere with the mentioned means and properties thereof.

**5.7.** In terms of establishing the constitutional general principle of proportionality, defining the means of validation and the qualitative requirements thereof are clearly and literally (*expressis verbis*) prescribed by the Constitution as an exception to the rule of generality of the constitutionally valid terms for the interference with all other rights stipulated in Chapter 2 of the Constitution, therefore, the compensation for the property expropriated for the purpose of securing the prevailing public interests (for the society and State needs) turns into a direct imperative of the Constitution, and either the legislature and the executive, or the judiciary have the discretion to interfere with it including to restrict the implementation thereof.

The axiological content of the implementation of the constitutionally envisaged guarantee for the expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs) prescribed by Article 60 § 5 of the Constitution “only with prior adequate compensation” is the **literal and unequivocal promise** of the constituent power **to provide “prior adequate compensation” for the expropriated property, without any conditions applicable thereof**. Due to the supreme power of the Constitution prescribed by Article 5 § 1 of the Constitution, and the directly applicable law prescribed by Article 3 § 3 of the Constitution, the legal content of this promise is, accordingly, the **unconditional commitment** of the public power to fulfil such a promise. At the same time, this promise of the constituent power, as a mirror reflection, acts as an **absolute right** of the owner of the expropriated property to request “*prior adequate compensation*” for the property expropriated for the purpose of securing the prevailing public interests (for the society and State needs).

The Constitutional Court considers it necessary to state that the quality of the “*absolute*” right, i.e. the property of being protected from restrictions or other interference by the public power, does not refer to the right to property prescribed by Article 60 of the Constitution as a general rule, which, as the Constitutional Court noted in paragraphs 5.4-5.6 of this decision, is a right subject to restrictions and other interferences, up to the termination of the right to property, (*mutatis mutandis*, paragraph 8 of the Constitutional Court Decision DCC-903 of July 13, 2010, and paragraph 4.4 of the Constitutional Court Decision DCC-1546 of June 18, 2020), provided that such restrictions and other interferences with the right to property meet the constitutional validity terms of such interferences.

**The quality of the absolute right**, in respect of which the constituent power has excluded the possibility of interference by the public power, on the contrary, burdens the public power to undertake the organisational structures and procedures necessary for its effective implementation in order to exercise that right, and refers to the right of the owner of the expropriated property to request “*prior adequate compensation*” under Article 60 § 5 of the Constitution only for the property expropriated for the purpose of securing the prevailing public interests (for the society and State needs).

The restriction or any other interference with this right, by their consequential impact, lead to the interference with the final outcome of the establishment of proportionality presented in paragraphs 5.4-5.6 of this decision, i.e. “*limitation of restrictions of interferences*” of the public power regarding the issue of interference with the property under Article 60 § 5 of the Constitution, and no public authority is endowed with such a power by the constituent power.

**5.8.** The Constitutional Court considers it necessary to state that in the two previous decisions (DCC-92 and DCC-630) regarding the constitutional institution of the expropriation

of property for the purpose of securing the prevailing public interests (for the society and State needs), the Court has consistently referred to the inviolability and immunity features of the constitutional guarantee of “prior adequate compensation” for the expropriation of property.

In particular, by the Decision DCC-92 in the case concerning the constitutionality of Article 22 §§ 2, 3, 4, and 5 of the Law of the Republic of Armenia on Real Estate adopted by the National Assembly on December 27, 1995, with Article 8 and Article 28 § 2 of the Constitution of the Republic of Armenia raised by the application of the President of the Republic, the Constitutional Court revealed the constitutional content of the institution of the expropriation of property for the society and State needs, and stated as follows: “***The Constitution stipulates that the expropriation of property for the society and State needs may be performed only in exceptional cases and based on the law, with prior adequate compensation. Thus, the ‘the society and State needs’ are recognized as the grounds for the expropriation of property, and the expropriation ‘only in exceptional cases’, expropriation ‘based on the law’, and expropriation ‘with prior adequate compensation for the expropriated property’ are recognized as the grounds for the guarantees of protection of the rights of the owner of the expropriated property***” (Constitutional Court Decision DCC-92 of February 27, 1998, paragraph 6).

Further, in the analysis leading to the conclusion of the contradiction with the Constitution of the provisions of the Civil and Land Codes listed in paragraph 4.2 of this decision on the issues raised by the application of the Human Rights Defender submitted to the Constitutional Court related to the massive process of expropriation of property for the society and State needs under the Government Decision No. 1151-N of August 1, 2002, the Constitutional Court has consistently emphasised the imperative of preserving the constitutional guarantees established in the constitutional norm called for the regulation of the legal relations in question, specifically stating as follows: “8. (...) ***It follows from the constitutional content of Article 31 § 3 of the Constitution that: (...) in case of expropriation of property, the prior compensation should be guaranteed, (...) this compensation should be adequate.*** (...) 9. (...) ***It follows from the provisions of Article 31 § 3 of the Constitution, that the Constitution recognizes ‘the society and State needs’ as the grounds for compulsory expropriation of property in the context of certain legal relations, and considers the expropriation ‘only in exceptional cases of prevailing public interests’, the expropriation ‘in accordance with the procedure prescribed by law’, and the expropriation ‘with prior adequate compensation for the expropriated property’, as guarantees for the protection of the right to property of the owner of the expropriated property.*** (...) 11. (...) ***The concept of ‘expropriation of property’, in turn, based on the context of a certain constitutional provision, implies a restriction or termination of the right to property to a specific object for the same legal purpose prescribed by the Constitution, provided that in return for that object, the***

*person gets equivalent other property or compensation in advance, which guarantees the consistency of securing the right to property*” (Constitutional Court Decision DCC-630 of April 18, 2006).

Despite the reminders and reiteration of the constitutional establishment of the guarantee of “*prior adequate compensation*” in legal relations of compulsory expropriation of property for the society and State needs, and the fact of being protected from the interference of the public power by virtue of the latter, as defined by the Constitutional Court Decisions DCC-92, and later - by DCC-630, the legal practice has – as indicated in the civil case submitted by the applicants in this case, and requested by the Constitutional Court – for 25 years remained unchanged in the aspect that the restrictions of the protection of the right established by the Civil Code, as a general rule of restriction of rights, are applied with respect to the claims of “*prior adequate compensation*” in case of expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs), in accordance with the logic of the general rule of restriction of the right to property (prescribed by Article 60 § 3), and not as a restriction of interference with the property in the sense of Article 60 § 5, i.e. as an **inviolable and integral** guarantee **protected from restrictions**, and secured by the stability and superior force of the constitutional norm of the protection of the right of an individual.

**5.9.** The Constitutional Court states that the target aim of defining the duties of the public power to respect and protect the fundamental rights of a human being and a citizen, as prescribed by Article 3 § 2 of the Constitution, is to oblige the public power not only to protect each enshrined right, but also to provide compensation for the damages caused in case of violation thereof (Constitutional Court Decision DCC-1383 of November 7, 2017).

The effective implementation of the fundamental right requires the public power not only to refrain from interfering with the implementation of that right, but it also dictates the terms for some positive duties due to the need for the effective implementation thereof.

In the light of the above, the Constitutional Court states that the primary procedural guarantee for the effective implementation of the right to claim “*prior adequate compensation*” for the expropriation of property prescribed by Article 60 § 5 of the Constitution, is to ensure its protection through the respective structures of the right to fair trial.

According to Article 331 § 1 of the Civil Code, the statute of limitations shall be the time period for the protection of rights on the claim of the person whose rights have been violated.

According to Article 335 § 2 of the Civil Code, the court shall apply the statute of limitations solely upon the application of the party to the dispute. The expiration of the term

for the statute of limitations, for the application whereof the party to the dispute claims for in accordance with the law, shall serve as a ground for the court to deliver a judgment on dismissal of the claim in accordance with the law.

Thus, the statute of limitations is the term provided by the law for seeking judicial protection of the violated rights. The legislature envisages legal consequences due to the expiration of this term, i.e. failure to seek judicial protection of the violated rights during the term for the statute of limitations may lead to the dismissal of the claim upon the request of the other party to the dispute on applying the statute of limitations, which obliges the court (provided that the term for the statute of limitations has expired) to dismiss the claim, thus terminating the judicial protection of the allegedly violated rights.

The Constitutional Court considers that through the application of the statute of limitations, and resulting from the dismissal of the claim submitted by the person whose rights were violated due to the application of the statute of limitations, the right in question loses its characteristics of implementability and protection through State coercion.

As mentioned above, the constitutional guarantee of providing prior adequate compensation for the expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs) is not subject to the conditionalities defined at the discretion of the public power. Therefore, the right of a person to claim prior adequate compensation for his expropriated property is not subject to restriction, regardless of the aim of the alleged restriction thereof, and under the principle of “*absolute right is subject to absolute protection*”.

The background of this constitutional dispute indicates that in the applicants’ case, the courts, based on the application of the Government as the other party to the dispute, dismissed the claim for prior adequate compensation for the expropriation of property due to the expiration of the term for the statute of limitations, and failed to consider the merits of the claim.

The Constitutional Court considers that the application of the statute of limitations with respect to paying prior adequate compensation for the expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs) leads to the impossibility of exercising this right, since it loses its characteristics of implementability and protection through State coercion.

Based on the above, the Constitutional Court concludes that the application of the statute of limitations with respect to the claim for prior adequate compensation for the expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs) is an interference with the right to prior adequate compensation for the expropriation of property for the purpose of securing the prevailing public interests (for the society and State



needs) prescribed by Article 60 § 5 of the Constitution, and pursuant to the justifications defined in paragraphs 5.3-5.8 of this decision, the public power is not constitutionally vested with such an authority.

**5.10.** Within the scope of consideration of this constitutional dispute, the Constitutional Court has already affirmed its chronological range. In this regard, taking into account the fact that 24 years have passed since the initial instant of that chronological framework, the Constitutional Court considers it necessary also to refer to the official assessments of the Constitutional Court, the European Court of Human Rights, and the Human Rights Defender in relation to the process of expropriation of property for the society and State needs, as the consequential context of the lasting neglect of the constitutionally prescribed constitutional guarantees for “*prior adequate compensation*”, as presented in paragraphs 5.3-5.8 of this decision.

The Constitutional Court deems it necessary to recall that in relation to the constitutionally prescribed right to prior adequate compensation for the expropriation of property for the purpose of securing the prevailing public interests (for the society and State needs), as legally precise guarantees stipulated in the norms endowed with the highest legal force of the Constitution, the Constitutional Court has conducted at least two basic researches, namely, the first research was conducted in connection with the concerns raised by the President of the Republic (Decision DCC-92), and the second one was conducted in connection with the concerns raised by the Human Rights Defender (Decision DCC-630).

Furthermore, with respect to the requests submitted to the European Court of Human Rights on the same issue, the European Court of Human Rights has consistently indicated the systemic gaps in the processes of expropriation of property for the society and State needs in Armenia, which have led to the violation of the fundamental rights of the applicants. In regard to the violations by the Republic of Armenia of the right prescribed by Article 1 (Protection of property) of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights has stated in the following cases, namely as follows:

(1) By the ECtHR Chamber Judgment in the case of *Minasyan and Semerjyan v. Armenia*, also referring to and based on the Decision DCC-92 of the Constitutional Court of February 27, 1998, the ECtHR observed violations of the right to property on the grounds that the expropriation of the applicants’ property was arbitrary and unlawful, and was not carried out in compliance with “*conditions provided for by law*” since “*the entire expropriation*

process, including the procedure for determination of the amount of compensation, was governed by a number of Government decrees”<sup>1</sup>.

(2) By the ECtHR Chamber Judgment in the case of *Hovhannisyan and Shiroyan v. Armenia*, the ECtHR observed violations of the right of protection of property on the grounds that the applicants’ right of use was arbitrarily and unlawfully terminated with reliance on legal rules which were not applicable to the legal relations on the termination of their right of use, and resulted in an unforeseeable or arbitrary outcome, as well as deprived the applicants of effective protection of their rights<sup>2</sup>.

(3) By the Judgment in the case of *Danielyan and Others v. Armenia*, the ECtHR observed a violation of the right of protection of property, stating that the Court has already examined identical complaints and arguments in the case of *Minasyan and Semerjyan v. Armenia*, and concluded that the deprivation of property and the termination of the right of use were not carried out in compliance with “conditions provided for by law”, and the Court does not see any reason to depart from that finding in the present case<sup>3</sup>.

(4) In the case of *Tunyan and Others v. Armenia*, the ECtHR observed a violation of the right of protection of property, stating that the Court has already examined identical complaints and arguments in the case of *Minasyan and Semerjyan v. Armenia*, and concluded that the deprivation of property and the termination of the right of use were not carried out in compliance with “conditions provided for by law”, and the Court does not see any reason to depart from that finding in the present case<sup>4</sup>.

(5) In the case of *Baghdasaryan and Zarikyants v. Armenia*, the ECtHR observed a violation of the right of protection of property, stating that the Court has already examined identical complaints and arguments in a number of cases against Armenia (see *Minasyan and Semerjyan v. Armenia*, *Tunyan and Others v. Armenia*, and *Danielyan and Others v. Armenia*, cited above), and concluded that the deprivation of property was not carried out in compliance with “conditions provided for by law”, and the Court does not see any reason to depart from that finding in the present case<sup>5</sup>.

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<sup>1</sup> *Minasyan and Semerjyan v. Armenia* (judgment), application no. 27651/05, paragraphs 70-77, June 23, 2009 (with Armenian [translation](#)).

<sup>2</sup> *Hovhannisyan and Shiroyan v. Armenia* (judgment), application no. 5065/06, paragraphs 40-47, July 20, 2010 (with Armenian [translation](#)).

<sup>3</sup> *Danielyan and Others v. Armenia* (judgment), application no. 25825/05, paragraphs 35-39, October 9, 2012 (with Armenian [translation](#)).

<sup>4</sup> *Tunyan and Others v. Armenia* (judgment), application no. 22812/05, paragraphs 35-39, October 9, 2012 (with Armenian [translation](#)).

<sup>5</sup> *Baghdasaryan and Zarikyants v. Armenia* (judgment), application no. 43242/05, paragraphs 22-26, November 13, 2014 (with Armenian [translation](#)).

(6) In the case of *Ghasabyan and Others v. Armenia*, the ECtHR observed a violation of the right of protection of property, stating that the Court has already examined identical complaints and arguments in a number of cases against Armenia (see *Minasyan and Semerjyan v. Armenia*, *Hovhannisyanyan and Shiroyan v. Armenia*, *Tunyan and Others v. Armenia*, and *Danielyan and Others v. Armenia*, cited above), and concluded that the deprivation of property and the termination of the right of use were not carried out in compliance with “*conditions provided for by law*”, and the Court does not see any reason to depart from that finding in the present case<sup>6</sup>.

(7) In the case of *Gharibyan and Others v. Armenia*, the ECtHR observed a violation of the right of protection of property, stating that the Court has already examined identical complaints and arguments in a number of cases against Armenia (see *Minasyan and Semerjyan v. Armenia*, *Tunyan and Others v. Armenia*, and *Danielyan and Others v. Armenia*, cited above), and concluded that the deprivation of property was not carried out in compliance with “*conditions provided for by law*”, and the Court does not see any reason to depart from that finding in the present case<sup>7</sup>.

(8) In the case of *Vardanyan and Nanushyan v. Armenia*, the ECtHR observed a violation of the right of protection of property (in part of deprivation of his house), stating particularly that the Court has already examined identical complaints and arguments in a number of cases against Armenia (see *Minasyan and Semerjyan v. Armenia*, and *Tunyan and Others v. Armenia*, cited above), and concluded that the deprivation of property at the material time was not carried out in compliance with “*conditions provided for by law*”, and the Court does not see any reason to depart from that finding in the present case<sup>8</sup>.

(9) In the case of *Hakobyan and Amirkhanyan v. Armenia*, the ECtHR observed a violation of the right of protection of property, stating that the Court has already examined identical complaints and arguments in a number of cases against Armenia (see *Minasyan and Semerjyan v. Armenia*, and *Tunyan and Others v. Armenia*, cited above), and concluded that the deprivation of property at the material time was not carried out in compliance with “*conditions provided for by law*”, and the Court does not see any reason to depart from that finding in the present case<sup>9</sup>.

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<sup>6</sup> *Ghasabyan and Others v. Armenia* (judgment), application no. 23566/05, paragraphs 22-26, November 13, 2014 (with Armenian [translation](#)).

<sup>7</sup> *Gharibyan and Others v. Armenia* (judgment), application no. 19940/05, paragraphs 22-26, November 13, 2014 (with Armenian [translation](#)).

<sup>8</sup> *Vardanyan and Nanushyan v. Armenia* (judgment), application no. 8001/07, paragraphs 97-100, October 27, 2016 (with Armenian [translation](#)).

<sup>9</sup> *Hakobyan and Amirkhanyan v. Armenia* (judgment), application no. 14156/07, paragraphs 50-54, October 17, 2019 (with Armenian [translation](#)).

All the conclusions of the European Court of Human Rights in the aforementioned cases referred to the violations of the right to property, including the right to claim “*prior adequate compensation*”, already indicated by the Constitutional Court in the certain time frame within the scope of consideration of this constitutional dispute, which were of systemic nature and, according to the assessment of the European Court of Human Rights, have led to arbitrary and unlawful interference in the specific circumstances of the above-mentioned cases.

The Constitutional Court also considers it necessary to state that the above-mentioned series of cases is not limited to the mentioned cases, and is also supplemented with the decisions on striking an application out of the Court’s list of cases under Article 37 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, by which the Republic of Armenia has unilaterally recognized the violations of Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the cases of property expropriation within the time frame already indicated by the Constitutional Court, in particular, that the expropriation of the applicants’ property “*was not carried out in compliance with the requirements provided for by Article 1 of Protocol 1*”. See, for example:

- (1) case of *Poghosyan and Others v. Armenia*<sup>10</sup>;
- (2) case of *Yeranosyan v. Armenia*<sup>11</sup>;
- (3) case of *Yedigaryan v. Armenia*<sup>12</sup>;
- (4) case of *Vahanyan and Others v. Armenia*<sup>13</sup>;
- (5) case of *Grigoryan and Others v. Armenia*<sup>14</sup>.

Apart from that, Human Rights Defenders have also referred in their annual reports to the issues of continued violations of the rights of owners in the field of property expropriation for the society and State needs. Among the continued and systemic issues pointed out, the latter also touched upon the non-application of the negotiations procedure for prior adequate

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<sup>10</sup> *Poghosyan and Others v. Armenia* (decision on striking the application out of its list of cases), application no. 3310/06, November 15, 2011.

<sup>11</sup> *Yeranosyan v. Armenia* (decision on striking the application out of its list of cases), application no. 3309/06, November 15, 2011.

<sup>12</sup> *Yedigaryan v. Armenia* (decision on striking the application out of its list of cases), application no. 10446/05, November 15, 2011.

<sup>13</sup> *Vahanyan and Others v. Armenia* (decision on striking the application out of its list of cases), applications nos. 220/06 and 32289/06, November 6, 2012.

<sup>14</sup> *Grigoryan and Others v. Armenia* (decision on striking the application out of its list of cases), application no. 40864/06, October 16, 2018.

compensation<sup>15</sup>, and the practice of continued non-payment of compensation to the owners of expropriated property even after the expropriation of the property<sup>16</sup>.

The above-mentioned context cannot predetermine the outcome of the verification of legal norms by the Constitutional Court for the purpose of implementing constitutional justice, however, it is a circumstance worthy of mention in order to reveal the consequences of neglecting the guarantees prescribed by the Constitution, and the insufficient attention to the decisions rendered by the Constitutional Court, first of all, for the citizens affected by violations of rights, as well as and in the sense of the general assessment of the protection of the right to property in the Republic of Armenia.

## **6. Assessment by the Constitutional Court of the right to fair trial**

Due to the nature of the owner's right to claim "*prior adequate compensation*" prescribed by Article 60 § 5 of the Constitution, and the conclusion of the exclusion by the

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<sup>15</sup> 2009 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia, and on the Violation of Human Rights and Fundamental Freedoms in the Country, sub-paragraph 2.2.3, <https://www.ombuds.am/images/files/37e25ee596e697fd1c3b2cbdaacc0a4a.pdf>.

<sup>16</sup> 2009 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia, and on the Violation of Human Rights and Fundamental Freedoms in the Country, sub-paragraph 2.2.3, <https://www.ombuds.am/images/files/37e25ee596e697fd1c3b2cbdaacc0a4a.pdf>, 2010 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia, and on the Violation of Human Rights and Fundamental Freedoms in the Country, sub-paragraph 2.2.3, <https://www.ombuds.am/images/files/7b273bc7061ea770062b252de866a3f8.pdf>, 2016 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia, and on the Status of Protection of Human Rights and Fundamental Freedoms, page 49, <https://www.ombuds.am/images/files/28731eccde752a30c70fae24a4a7de7.pdf>, 2017 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia, and on the Status of Protection of Human Rights and Fundamental Freedoms, Chapter 2, Part 3, <https://www.ombuds.am/images/files/b5220dd0b83b420a5ab8bb037a1e02ca.pdf>, 2018 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia, and on the Status of Protection of Human Rights and Fundamental Freedoms, Chapter 2, Part 1, <https://www.ombuds.am/images/files/8f03a4f279d0491fd510fca443f8f269.pdf>, 2019 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia, and on the Status of Protection of Human Rights and Fundamental Freedoms, Chapter 2, Part 1, <https://www.ombuds.am/images/files/15b2661f76d10eb07746d7d4d4dec84f.pdf>, 2020 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia, and on the Status of Protection of Human Rights and Fundamental Freedoms, Chapter 2, Part 1, <https://www.ombuds.am/images/files/883f55af65e3c33553139031c7ac0ce6.pdf>, 2021 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia, and on the Status of Protection of Human Rights and Fundamental Freedoms, Chapter 2, Part 1, <https://www.ombuds.am/images/files/022666474d87ff84a86acf39be58bec8.pdf>.

constituent power of the authority of the public power in relation to the restriction thereof, the resolution of this constitutional dispute no longer requires the consideration of the statute of limitations in the framework of this dispute within the scope of the right to fair trial prescribed by Article 63 § 1 of the Constitution.

7. The issue pointed out by the applicants in this application is whether the failure to define by the contested provision the requirement of prior adequate compensation for the legitimate expectation of ownership prescribed by Article 60 § 5 of the Constitution (within the meaning of the fourth sentence of Article 28 of the Constitution in force at the time of the expropriation of the property, i.e. expropriation of property for the society and State needs) in disputes arising from legal relations regulated by the legal provisions effective from January 1, 1999 to October 1, 2006, has led to the application of the general rule of the statute of limitations (stipulated by the Civil Code) with respect to such claims, and, as a result, the applicants' possible ownership and the right to fair trial were restricted due to the expiration of the three-year term defined by the general rule of the statute of limitations under the Civil Code.

The Constitutional Court also states that the statute of limitations was applied to the applicants' claim for prior adequate compensation prescribed by Article 60 § 5 of the Constitution, considering the applicants' right to claim as a right subject to the general rule of restrictions of the right to property prescribed by Article 60 § 3 of the Constitution, and consequently, as a right subject to constitutionally valid restrictions defined by the legislature. Under such an approach, the failure to define the requirement of prior adequate compensation for the expropriated property prescribed by Article 60 § 5 of the Constitution in the list of the statute of limitations prescribed by Article 344 of the Civil Code, has been applied in law enforcement practice in the interpretation that the provisions defined by the legislature shall apply to the mentioned set of claims.

In paragraphs 5.3-5.8 of this decision, the Constitutional Court has already referred to the lack of authority of the public power (including the legislature) to apply restrictions or otherwise interfere with the claim for prior adequate compensation prescribed by Article 60 § 5 of the Constitution. This conclusion of the Constitutional Court makes it impossible to consider as a gap in the law the failure to include the requirement for prior adequate compensation prescribed by Article 60 § 5 of the Constitution in the list of exceptions to the general rule of the statute of limitations prescribed by Article 344 of the Civil Code.

The Constitutional Court recalls that *"(...) a legislative gap can be the subject of the Constitutional Court's consideration only in the case where other legal guarantees to fill the gap are missing in the legislation, or in the case of the presence of relevant legal guarantees*

*in the legislation, a contradictory law-enforcement practice has been formed, or where the existing legislative gap does not ensure the possibility of realizing any right. Otherwise, the issue of constitutionality of the legal regulation is not subject of the Constitutional Court's consideration"* (Constitutional Court Decision DCC-914 of September 14, 2010, paragraph 7).

Considering that any public authority, including the legislature, is not empowered to restrict the promise of the constituent power to provide "*prior adequate compensation*" prescribed by Article 60 § 5 of the Constitution, by the implementation whereof the promise of the constituent power loses its characteristics of implementability and protection through State coercion, the failure to define the requirement of prior adequate compensation for the expropriation of property for the society and State needs without the owner's consent in disputes arising from legal relations regulated by the legal provisions effective from January 1, 1999 to October 1, 2006, in the list of the statute of limitations prescribed by the Civil Code with respect to the right to claim "*prior adequate compensation*" prescribed by Article 60 § 5 of the Constitution, cannot be interpreted as a basis for applying the statute of limitations, since under Article 60 § 5 of the Constitution (based on the fourth sentence of Article 28 of the Constitution of 1995, in force at the time of the expropriation of the property), the provisions on the statute of limitations prescribed by the Civil Code of the Republic of Armenia cannot in general apply to the claims for prior adequate compensation for the property expropriated without the owner's consent.

Based on the results of the examination of the case and subject to Article 167(1), Article 168(1), Article 169 § 1(8), and Article 170 §§ 1 and 2 of the Constitution, as well as guided by Articles 63 and 64, and 69 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS:**

1. Article 344 of the Civil Code of the Republic of Armenia complies with the Constitution in the interpretation that the failure to define the requirement of prior adequate compensation for the expropriation of property for the society and State needs without the owner's consent in disputes arising from legal relations regulated by the legal provisions effective from January 1, 1999 to October 1, 2006, in the list of the statute of limitations, is not considered as a ground for applying the statute of limitations, since under Article 60 § 5 of the Constitution (based on the fourth sentence of Article 28 of the Constitution in the edition of 1995, in force at the time of the expropriation of the property), the provisions on the statute of limitations prescribed by the Civil Code of the Republic of Armenia shall not apply to the claims for prior adequate compensation for the property expropriated without the owner's consent.

2. Pursuant to Article 69 § 10 of the Constitutional Law on the Constitutional Court, the final judicial act rendered against the applicants shall be subject to revision upon the grounds of a newly emerged circumstance as prescribed by the Law.

3. Pursuant to Article 170 § 2 of the Constitution, this Decision shall be final and shall enter into force upon its promulgation.

**PRESIDENT**

**A. DILANYAN**

November 7, 2023

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